

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Jan 27, 2023**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

ANDREI STEPHANOVICH  
BORGHERIU,

Defendant.

No. 4:22-cr-06040-MKD

ORDER GRANTING  
DEFENDANT'S MOTION TO  
CONTINUE AND THIRD CASE  
MANAGEMENT ORDER

**ECF No. 22**

Before the Court is Defendant's Unopposed Motion to Continue, ECF No. 22. On January 26, 2023, the Court held a pretrial conference. Justin Lonergan appeared on behalf of Defendant. Frieda K. Zimmerman appeared on behalf of the United States. Kristina Terra provided interpretation services for Defendant.

Defendant states a continuance in this matter is necessary to allow his counsel adequate time for discovery and to prepare for trial. Defendant indicated there is substantial discovery in this matter, he has requested additional discovery from the

ORDER GRANTING DEFENDANT'S MOTION TO CONTINUE AND  
THIRD CASE MANAGEMENT ORDER – 1

1 United States that is forthcoming, and he anticipates pretrial motion practice.  
2 Defendant has filed a Waiver of Speedy Trial Rights, accompanied by a Statement  
3 of Reasons, in support of the motion. ECF No. 24. The United States does not  
4 object to a continuance in this matter.

5 The Court has reviewed the file, has heard from counsel, and is fully  
6 informed. The Court finds that, taking into account the exercise of due diligence,  
7 the current trial date of February 13, 2023, would deprive defense counsel of  
8 adequate time to obtain and review discovery and conduct effective preparation.  
9 18 U.S.C. § 3161(h)(7)(B)(iv). Therefore, the Court finds that the ends of justice  
10 are served by a continuance in this matter and further that the ends of justice served  
11 by a continuance outweigh the best interests of the public and Defendant in a  
12 speedy trial. 18 U.S.C. § 3161(h)(7)(A).

13 Accordingly, **IT IS HEREBY ORDERED:**

14 **1. Defendant's Motion to Continue Trial, ECF No. 22, is GRANTED.**

15 **2. The current trial date of February 13, 2023, is STRICKEN and**  
16 **RESET to September 25, 2023, at 9:00 a.m.,** commencing with a final  
17 pretrial conference at **8:30 a.m.** Trial shall take place in **Richland,**  
18 **Washington.**

19 **3. A pretrial conference is SET for August 28, 2023, at 1:30 p.m. in**  
20 **Richland, Washington.**

1       **4.** Counsel for defense shall notify Defendant of all hearings and ensure  
2 Defendant's attendance at court.

3       **5. Local Criminal Rules.** Counsel shall comply with the Eastern  
4 District of Washington Local Criminal Rules of Procedure (LCrR), except  
5 where specifically modified below or by subsequent Order.

6       **6. Emailing the Court.** Where this Order requires counsel to email  
7 documents to the Court, all documents shall be attached to the email in  
8 Microsoft Word (.doc/.docx) or rich-text (.rtf) format. The subject line of  
9 each email shall be formatted as follows:

10                   **[Case No.]; [Case Name]; [Title of Document]**

11                   (e.g.: 13-cr-9999-MKD; USA v. Doe; Trial Brief)

12       **7. Discovery**

13       **A.** All discovery documents must be Bates-stamped with a unique  
14 identifier and must be produced digitally in a text-searchable  
15 format. The Court will grant relief from this requirement only  
16 in exceptional circumstances, upon motion and good cause  
17 shown.

18       **B.** Production of discovery shall be governed by Local Criminal  
19 Rule 16. *See* LCrR 16.  
20

1           **C.**     The Court presumes a request for discovery and disclosure  
2                     under Federal Rules of Evidence 404(b), 608(b), and 609,  
3                     *Brady v. Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*,  
4                     405 U.S. 150 (1972), *United States v. Henthorn*, 931 F.2d 29  
5                     (9th Cir. 1991), and their progeny, and as such these items are  
6                     ordered disclosed by the deadline set forth in Local Criminal  
7                     Rule 16.

8           **D.**     At arraignment or within 14 days thereafter, the United States is  
9                     required to disclose evidence relating to Defendant's guilt or  
10                    punishment that might reasonably be considered favorable to  
11                    the Defendant. *See* LCrR 16(a)(6); *see also Brady*, 373 U.S.  
12                    83; *United States v. Agurs*, 427 U.S. 97 (1976); Fed. R. Crim.  
13                    P. 5(f).<sup>1</sup> This is a continuing duty for newly discovered  
14                    evidence. LCrR 16(c); *see also* ECF No. 15.

15           **E.**     Pursuant to Federal Rule of Criminal Procedure 16(d)(2),  
16                    failure to comply may result in an order permitting the  
17

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18     <sup>1</sup> Nothing in this requirement enlarges or diminishes the United States' obligation  
19     to disclose information and evidence to the Defendant under *Brady* and its  
20     progeny.

discovery or inspection; granting a continuance; or any other order that is just under the circumstances (including contempt, sanctions, referral to a disciplinary authority, dismissal of charges, exclusion of evidence or witnesses, and adverse jury instructions).

**8. Expert Witness Summaries**

**A.** When each party produces to opposing counsel summaries of its expert witness testimony for which disclosure is required under Federal Rule of Criminal Procedure 16 and Local Criminal Rule 16, counsel shall also email an electronic copy of the summary to the Court at [DimkeOrders@waed.uscourts.gov](mailto:DimkeOrders@waed.uscourts.gov).

**B.** All summaries of expert witness testimony must conform to Federal Rule of Criminal Procedure 16, Local Criminal Rule 16, and applicable case law interpreting those Rules. The Court will not permit an expert witness to testify about opinions which are not explicitly expressed in that expert's summary. *See, e.g., United States v. W.R. Grace*, 526 F.3d 499 (9th Cir. 2008).

**9. CM/ECF Technical Assistance.** Parties requiring technical assistance concerning the CM/ECF system, such as the procedures for filing

1 non-scannable exhibits, shall consult the District’s “Electronic How To”  
2 page (<https://www.waed.uscourts.gov/electronic-how>) or contact the  
3 CM/ECF Help Desk by phone at (866) 236-5100 or (509) 458-3410 or by  
4 email at [ecfinfo@waed.uscourts.gov](mailto:ecfinfo@waed.uscourts.gov). Inquiries requesting technical  
5 assistance concerning the CM/ECF system shall not be directed to the  
6 Judge’s chambers.

## 7 **10. Motions Practice**

8 **A. *Generally.*** All motions shall either be: a) noted for hearing  
9 without oral argument fourteen (14) days after filing, or b)  
10 noted for hearing with oral argument at the pretrial conference  
11 pursuant to Local Criminal Rule 12(c). Responses and replies  
12 to motions must be filed in accordance with Local Criminal  
13 Rule 45 and 47, which incorporate the requirements of Local  
14 Civil Rule 7.1.

15 **B. *Expedited Hearing.*** Any party seeking an expedited hearing  
16 on a time-sensitive matter must comply with Local Criminal  
17 Rule 12(c)(3).

18 **C.** If a case has more than one defendant, the Court will construe  
19 any motion, including motions to continue, as applying to *all*  
20 defendants, unless that defendant indicates they do not wish to

1 be joined in the motion. **Defendants thus do not need to file**  
2 **motions to join. Any Defendant wishing to opt out of a**  
3 **motion shall file a notice so stating within seven days of the**  
4 **filing of the motion.**

5 **D. *Sealed Documents.*** Any and all sealed documents shall be  
6 filed by the parties under the sealed event as a sealed document.  
7 The parties are not required to file a separate motion to seal a  
8 document. The parties shall file any objections to a sealed  
9 document by no later than five days after the filing of the sealed  
10 document. The Court will thereafter review the sealed  
11 document and any objections filed to determine whether the  
12 document should be unsealed. Any party filing a sealed  
13 document shall email [DimkeOrders@waed.uscourts.gov](mailto:DimkeOrders@waed.uscourts.gov) to  
14 inform the Court of the filing. The email shall note the ECF  
15 number of the sealed document and the general nature of the  
16 document.

17 **11. Witness Testimony.** At any hearing, including trial, in which witness  
18 testimony is given, the witness must testify in Court. Absent exceptional  
19 circumstances, a testifying witness may not appear by telephone or video  
20 conference.

## 12. Trial Continuances

A. ***Motion Deadline.*** All motions to continue the trial must be heard before or at the pretrial conference. **Any motion to continue trial made after the pretrial conference has occurred will not be granted absent exceptional circumstances.**

B. ***Statement of Reasons.*** If the Defendant seeks a continuance, a Speedy Trial Waiver and Statement of Reasons in support of the motion to continue must be filed contemporaneously with the motion.<sup>2</sup> The Statement of Reasons must 1) be signed by the Defendant, 2) be signed by a certified translator, if applicable, and 3) indicate the latest date upon which Defendant is willing to proceed to trial. **The Court requests that the Speedy Trial Waiver and Statement of Reasons extend two**

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<sup>2</sup> The Court's Speedy Trial Waiver and Statement of Reasons form can be found at the following link:

<https://www.waed.uscourts.gov/sites/default/files/forms/Speedy%20Trial%20Waiver%205-13-22.docx>



1 weeks past the new proposed trial date.

2 C. **Procedure.** Before filing a motion to continue, counsel shall  
3 first contact the Courtroom Deputy at (509) 943-8172 to obtain  
4 new pretrial conference and trial dates consistent with the  
5 length of the requested trial continuance. Thereafter, counsel  
6 shall confer with opposing counsel regarding case management  
7 deadlines<sup>3</sup> consistent with the new pretrial conference and trial  
8 date. **All motions to continue must include proposed case**  
9 **management deadlines (either joint or individual) to ensure**  
10 **the to-be-imposed deadlines are best suited to this case.**

11 **13. Pretrial Conference**

12 A. The Pretrial Conference is scheduled as indicated in the  
13 Summary of Deadlines below. At this hearing, the Court will  
14 hear **ALL** pretrial motions that are noted for oral argument.

15 \_\_\_\_\_  
16 <sup>3</sup> A form with the Court's standard case management deadlines can be found at the  
17 following link:

18 [https://www.waed.uscourts.gov/sites/default/files/forms/Proposed%20Case%20Ma](https://www.waed.uscourts.gov/sites/default/files/forms/Proposed%20Case%20Management%20Deadlines%20Form%20for%20Public%20Website.6.1.2022.pdf)  
19 [nagement%20Deadlines%20Form%20for%20Public%20Website.6.1.2022.pdf](https://www.waed.uscourts.gov/sites/default/files/forms/Proposed%20Case%20Management%20Deadlines%20Form%20for%20Public%20Website.6.1.2022.pdf)  
20

1           **B.** All pretrial conferences are scheduled to last no more than  
2           **thirty (30) minutes**, with each side allotted **fifteen (15)**  
3           **minutes** to present their own motions and resist motions by  
4           opposing counsel. If any party anticipates requiring longer than  
5           fifteen minutes, that party must notify the Courtroom Deputy at  
6           least seven (7) days prior to the hearing. **Any party who fails**  
7           **to provide this notice will be limited to fifteen (15) minutes.**

8           **C.** If a motion is to be heard with oral argument, and a party plans  
9           to call witnesses or present exhibits, that party must file an  
10          exhibit and/or witness list by no later than **72 hours** before the  
11          hearing on the motion.

12          **D.** If a party intends to use a laptop, thumb drive, or DVD or CD  
13          for presentation of documents, or audio or video recordings,  
14          that party must contact the Courtroom Deputy at least **one week**  
15          prior to the hearing and confirm the compatibility of the  
16          technology and equipment.

17          **E.** If a party intends to use a demonstrative exhibit, such as a  
18          PowerPoint presentation, it must be submitted to the Court and  
19          all opposing parties at least **24 hours** prior to its intended use.

20          **14. Exhibit Lists**

A. On the date set forth in the Summary of Deadlines, after conferring with counsel, each party shall file a list of exhibits the party intends to introduce at trial. Each party shall also email copies of their exhibit list to the Court at [DimkeOrders@waed.uscourts.gov](mailto:DimkeOrders@waed.uscourts.gov).

The parties shall provide their exhibit list in the following format:

Ex. #	Admitted	Description
1		Photograph of items seized
2		Aerial video surveillance from 1/1/2011.  Start Time: 01:03:23  End Time: 01:09:54

Exhibit lists shall include a unique exhibit number and a brief description of the exhibit. For all exhibits consisting of an audio or video file, the exhibit list must designate the precise beginning and ending time indexes of the portion of the file the party intends to use at trial.

B. The United States shall consecutively number their exhibits from **1 to 999**. In single-defendant cases, Defendant shall consecutively number exhibits from **1000 to 1999**; in multi-

1 defendant cases, Defendants shall consecutively number  
2 exhibits from x000 to x999, substituting “x” for each  
3 Defendant’s assigned case identifier (e.g. Defendant 3 would  
4 number exhibits from 3000 to 3999, etc.). Exhibits shall be  
5 pre-marked for identification before trial commences.

6 **15. Witness Lists.** On the date set forth in the Summary of Deadlines,  
7 after conferring with counsel, each party shall file and serve a list of  
8 witnesses that party intends to call to testify at trial. **The witness list must**  
9 **identify the existence, but need not include the name, of any confidential**  
10 **informant (CI) the United States intends to call to testify.** Parties shall  
11 email copies of their witness list to the Court at  
12 [DimkeOrders@waed.uscourts.gov](mailto:DimkeOrders@waed.uscourts.gov).

13 **16. Trial Briefs, Proposed Jury Instructions and Verdict Form, and**  
14 **Requested Voir Dire.** On the date set forth in the Summary of Deadlines,  
15 after conferring with counsel, each party shall file a trial brief, proposed jury  
16 instructions and verdict form, and requested voir dire, in accordance with the  
17 requirements below. Each party shall email copies to the Court at  
18 [DimkeOrders@waed.uscourts.gov](mailto:DimkeOrders@waed.uscourts.gov).

1           **A.     *Trial Briefs.*** Trial briefs shall not exceed twenty (20) pages  
2                                   without prior Court approval, upon motion and good cause  
3                                   shown.

4           **B.     *Proposed Jury Instructions and Verdict Form.*** Jury  
5                                   instructions shall 1) address issues that are unique to the case,  
6                                   and 2) include instructions regarding the elements of each  
7                                   charge or defense. If a Ninth Circuit Model Jury Instruction  
8                                   exists for a particular charge or defense, the parties shall  
9                                   provide the model instruction or shall submit argument as to  
10                                  why the instruction is inadequate or no longer supported by  
11                                  law. Proposed jury instructions shall be accompanied by a  
12                                  proposed verdict form. **The parties must confer to develop**  
13                                  **joint proposed jury instructions and the verdict form.** The  
14                                  Court will only accept an individual party's proposed jury  
15                                  instructions on those points/issues upon which the parties could  
16                                  not agree, and only if the party's memoranda accompanying the  
17                                  individually-proposed instruction(s) sets forth the legal  
18                                  authority and justification for why the instruction is necessary.

19           **C.     *Requested Voir Dire.*** The parties may request that the Court  
20                                  include specific questions during the Court's standard voir dire.

Requested voir dire shall not duplicate information elicited in the Clerk's Office Jury Questionnaire ("COJQ") and the Court's Criminal Jury Trial Procedures Letter.

**17. Exhibit Binders.** On the date set forth in the Summary of Deadlines, after conferring with counsel, each party must provide to all other parties and to the Court a Bates-stamped copy of all trial exhibits — or, in the case of physical exhibits, a photograph or other reproduction of the exhibit — the party intends to introduce at trial. All trial exhibits shall be organized sequentially by exhibit number in a three-ring binder.

**18. JERS.**

**A.** The Court utilizes the Jury Evidence Recording System (JERS), a system that makes electronic evidence available in the jury room during deliberations. **Counsel shall promptly consult the Court's "JERS Instructions for Attorneys"<sup>4</sup> to ensure they acquire, retain, and provide evidence to the Court in the necessary format.**

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<sup>4</sup> This document can be found on the Court's public website at the following link:  
[https://www.waed.uscourts.gov/sites/default/files/support/jers\\_basics\\_for\\_lawyers.pdf](https://www.waed.uscourts.gov/sites/default/files/support/jers_basics_for_lawyers.pdf)

1           **B.**     On the date set forth in the Summary of Deadlines, after  
2                     conferring with counsel, each party who intends to introduce  
3                     evidence at trial must supply a CD, DVD, or USB drive to the  
4                     Courtroom Deputy containing all of that party's exhibits in the  
5                     required format. Counsel may contact the Courtroom Deputy at  
6                     (509) 943-8172 with any questions.

7           **19. Trial Notices.** On the date set forth in the Summary of Deadlines,  
8                     after conferring with counsel, each party shall file a notice that indicates the  
9                     amount of time requested for opening statement and for voir dire. In  
10                    addition, defense counsel must indicate if his/her client waives presence at  
11                    sidebar and jury questions.

12           **20. Technology Readiness Meeting.** On the date set forth in the  
13                    Summary of Deadlines, any party seeking to offer video or audio evidence at  
14                    trial must meet with Court staff at the location of the trial to verify  
15                    compatibility with the Court's presentation systems. The parties shall  
16                    contact the Courtroom Deputy at (509) 943-8172 to arrange this meeting.

17           **21. Trial.** The jury trial is **SET** for **September 25, 2023**, at **9:00 a.m.** in  
18                    **Richland, Washington.** The **final pretrial conference** will commence at  
19                    **8:30 a.m.** on the first day of trial.

20           **22. Summary of Deadlines**

1	<b>Rule 16 Disclosure of United States' Expert Witnesses</b>	<b>May 15, 2023</b>
2	<b>All pretrial motions, including discovery motions, <i>Daubert</i> motions, and motions <i>in limine</i>, filed</b>	<b>July 31, 2023</b>
3	<b>PRETRIAL CONFERENCE</b>	<b>August 28, 2023</b>
4	<b><i>Deadline for motions to continue trial</i></b>	<b>1:30 p.m. - RICHLAND</b>
5	CIs' identities and willingness to be interviewed disclosed to Defendant (if applicable)	<b>September 11, 2023</b>
6	Grand jury transcripts produced to Defendant	<b>September 11, 2023</b>
7	Case Agent:	
8	CIs:	
9	Other Witnesses:	<b>September 18, 2023</b>
10	Exhibit lists filed and emailed to the Court	
11	Witness lists filed and emailed to the Court	<b>September 18, 2023</b>
12	Trial briefs, jury instructions, verdict forms, and requested voir dire filed and emailed to the Court	<b>September 11, 2023</b>
13	Exhibit binders delivered to all parties and to the Court	<b>September 18, 2023</b>
14	Delivery of JERS-compatible digital evidence files to the Courtroom Deputy	<b>September 18, 2023</b>
15	Trial notices filed with the Court	<b>September 18, 2023</b>
16	Technology readiness meeting (in-person)	<b>September 18, 2023</b>
17	<b>FINAL PRETRIAL CONFERENCE</b>	<b>September 25, 2023</b>
18		<b>8:30 a.m. - RICHLAND</b>
19	<b>JURY TRIAL</b>	<b>September 25, 2023</b>
20		<b>9:00 a.m. - RICHLAND</b>

23. A Waiver of Speedy Trial Rights, accompanied by a Statement of Reasons, has been signed and filed by Defendant. ECF No. 24. All time from the current trial date of **February 13, 2023**, to the new trial date of **September 25, 2023**, is **EXCLUDED** for speedy trial calculations pursuant to 18 U.S.C. § 3161(h)(7).



1       **24.** All time from the filing of Defendant’s Motion to Continue on  
2       **January 19, 2023**, to the date of the motion hearing on **January 26, 2023**, is  
3       excluded for speedy trial calculations pursuant to 18 U.S.C. § 3161(h)(1)(D).

4       **IT IS SO ORDERED.** The Clerk’s Office is directed to enter this Order  
5       and provide copies to all counsel, the U.S. Probation Office, and the U.S. Marshals  
6       Service.

7       **DATED** January 27, 2023.

8                               *s/Mary K. Dimke*  
9                               MARY K. DIMKE  
10                              UNITED STATES DISTRICT JUDGE  
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